

**REMARKS**

Claims 1 and 3-18 are currently pending in this application. Claim 2 was canceled in a previous amendment.

Claims 1, 10, and 11 have been amended to more clearly recite that the "generally planar and essentially rigid top surface" or "top panel" are for "supporting a companion mattress." No new matter is added by these amendments.

Claims 1, 6-14, 17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A). Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. (U.S. Patent No. 4,734,946). Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. (U.S. Patent No. 6,557,191). Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. and further in view of Wallace et al. (U.S. Patent No. 2,687,537). Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Stephens (U.S. Patent No. 1,866,953).

**Poole Discloses Decorative Panels for a Mattress Frame, Not for a Mattress Foundation**

The Examiner asserts that base claims 1, 10, and 11 are unpatentable under 35 U.S.C. §103(a) based on Broyles in view of Poole. Applicant respectfully disagrees.

The Examiner has apparently confused the mattress "bed frame 50" disclosed by Poole with the "foundation C" disclosed in Fig. 1 of Broyles and the "foundation 100" disclosed in Fig. 1 of the present invention. Poole explicitly defines the bed frame 50 at page 2, col. 1, lines 19-23 as:

A bed frame 50 ... serves to confine the mattress 70 to a regular shape within the bed frame 50.

Poole distinguishes the "bed frame 50" from a separate mattress foundation by stating at page 2, col. 1, lines 24-26:

It is common to support the base [62] on a pedestal 64 which raises the mattress [70] off the ground.

Further, Poole clearly shows, in Fig. 3, a mattress foundation including pedestals 64 and the base 62 which provide upward support not only for the "water filled mattress 70," but also for the "frame 50" (See Poole, Fig. 3).

The "base 62" (Fig. 3) of Poole clearly corresponds to the "top surface 110" (Fig. 1) of the present application. Thus, each "pedestal 64" (Fig. 3) of Poole must correspond to an "essentially rigid sidewall ... depending downward from the top surface" as claimed in base claims 1, 10, and 11, and shown in Fig. 1 of the present invention. This leads to the logical observation that the "frame 50" cannot correspond to any part of the "mattress foundation" as claimed in base claims 1, 10, and 11 because the pedestals 64 (Fig. 3) of Poole serve the sidewall function and purpose. As a next logical observation, Poole does not teach or suggest applying "decorative panels" to either "pedestal 64." Therefore, Poole does not teach or suggest applying "decorative panels" to a "mattress foundation" as claimed in claims 1, 10, and 11. In contrast, Poole only discloses applying "decorative panels" to a frame of the mattress 70 to make the mattress 70 more aesthetically pleasing because the mattress 70 "is encased in a safety liner 60" that has no upholstered features or textures (see Poole, page 2, col. 1, line 19 and Fig. 3).

Even assuming that Broyles could be combined with Poole, which the Applicant disputes, the resulting apparatus, at best, would be a mattress foundation supporting a mattress having "decorative panels" which is not the invention as recited in base claims 1, 10, and 11.

The Examiner has admitted that Broyles does not teach or suggest "a mattress foundation (C) having at least one sidewall outer surface (2-5) including three dimensional architectural features formed or molded therein, wherein the architectural features mimic a pattern and tactile feel substantially comparable to a quilted surface of a companion mattress" (See Office Action, Section 2). Because Poole only discloses "decorative panels" and "relief motifs" for a mattress or mattress frame, as opposed to a mattress foundation, Poole cannot not teach or suggest "a mattress foundation.... wherein an outer surface of the sidewall includes three dimensional architectural features formed therein, wherein the architectural features mimic a pattern and tactile feel substantially comparable to a quilted surface of the companion mattress" as recited in base claim 1.

For the above reasons, the combination of Broyles and Poole fail to teach or suggest all of the elements of base claims 1, 10, and 11. Therefore, the Examiner has failed to make a

prima facie case of obviousness for base claims 1, 10, and 11 with regard to Broyles and Poole. Accordingly, the §103 Rejection of amended base claims 1, 10, and 11 should be withdrawn.

Because claims 3-9 and 12-18 depend from, and are limited by, base claims 1 and 11 respectively, the §103 Rejection of these claims should be withdrawn.

In view of the above discussion, it is also apparent there would be no motivation to combine Broyles with Poole because neither were concerned with making the "mattress foundation" more aesthetically pleasing. Broyles is not concerned with decorating the "foundation C." Poole is only concerned with making the "mattress 70" more aesthetically pleasing by attaching decorative panels to the frame 50 surrounding the mattress 70.

Therefore, there is no prima facie case of obviousness for base claims 1, 10, and 11 due to lack of motivation to combine Broyles and Poole. Accordingly, the §103 Rejection of amended base claims 1, 10, and 11 should be withdrawn.

Because claims 3-9 and 12-18 depend from, and are limited by, base claims 1 and 11 respectively, the §103 Rejection of these claims should be withdrawn.

**Poole discloses Non-Analogous Art**

Applicant respectfully disagrees with the §103 Rejection of base claims 1, 10, and 11 for the following additional reason.

Poole clearly discloses "decorative panels" for a mattress frame of a mattress, as opposed to a "mattress foundation" as recited in base claims 1, 10, and 11. The "frame 50" is a mattress frame that provides structure to the "mattress 70." The USPTO has assigned different classifications for waterbeds and mattresses than for "mattress foundations." Further, the "frame 50" clearly has "differences in structure and function" than the "mattress foundation" as recited in base claims 1, 10, and 11 (See *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973)). For example, the "frame 50" functions to provide lateral support "to confine the mattress 70 to a regular shape" (See Poole, page 2, col. 1, lines 22-23). In contrast, the "mattress foundation" of the present invention includes "a generally planar and essentially rigid top surface having an upper side for supporting a companion mattress," as recited in claim 1. Poole, itself, shows a mattress foundation including base 62 and pedestals 64 that is separate and distinct from the "mattress 70" and its associated "frame 50."

Thus, the Examiner cannot rely upon Poole for the above §103 Rejection because Poole discloses non-analogous art related to providing "decorative panels" for a mattress or mattress frame, not for a mattress foundation. Accordingly, the §103 Rejection should be withdrawn for this additional reason.

**Neither Broyles Nor Poole Disclose Features that Mimic a Pattern and Tactile Feel Substantially Comparable to a Quilted Surface of a Companion Mattress**

Applicant respectfully disagrees with the §103 Rejection of base claims 1, 10, and 11 for the following further reason.

Broyles only discloses a companion mattress "preferably of rubber construction" without any aesthetic features such as decorative panels (See col. 3, line 20). Therefore, the "foundation C," as admitted by the Examiner, cannot include "features that mimic... a companion mattress" because the companion "mattress B" includes no features such as the quilted surface of a companion mattress. Broyles teaches away from using any mattress other than a rubber mattress (See col. 3, lines 20-35).

Poole only discloses a companion mattress that is a "water filled mattress 70 encased in a safety liner 60" (See page 2, col. 1, lines 18-19). Therefore, the pedestals 64 cannot not include "features that mimic... a companion mattress" because the safety liner 60 of companion "mattress 70" does not include features such as a quilted surface. In fact, Poole provides a decorated panel for the companion "mattress 70," not its associated foundation, because the mattress 70 itself does not have a "quilted surface" or "quilting pattern" as recited in base claims 1, 10, and 11.

Because neither Broyles nor Poole, alone or in combination, teach or suggest a "mattress foundation" with "features that mimic...a companion mattress" as recited in base claims 1, 10, and 11, the combination of Broyles and Poole fail to teach or suggest all of the elements of base claims 1, 10, and 11. Therefore, the Examiner has failed to make a prima facie case of obviousness for base claims 1, 10, and 11 with regard to Broyles and Poole. Accordingly, the §103 Rejection of amended base claims 1, 10, and 11 should be withdrawn.

Because claims 3-9 and 12-18 depend from, and are limited by, base claims 1 and 11 respectively, the §103 Rejection of these claims should be withdrawn.

**Other Rejections**

Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 3. Accordingly, the §103 Rejection of claim 3 should be withdrawn.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 4. Accordingly, the §103 Rejection of claim 4 should be withdrawn.

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. and further in view of Wallace et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 5. Accordingly, the §103 Rejection of claim 5 should be withdrawn.

Claims 15 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view Stephens. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claims 15 and 16. Accordingly, the §103 Rejection of claims 15 and 16 should be withdrawn.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

We believe that we have appropriately provided for fees due in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P03-085 from which the undersigned is authorized to draw.

Dated: September 6, 2006

Respectfully submitted,

By 

Christopher P. Carroll

Registration No.: 55,776

ROPES & GRAY LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

(617) 951-7050 (Fax)

Attorneys/Agents For Applicant